

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of:)

BellSouth Corporation)

Petition for Rulemaking to Change)
The Distribution Methodology for Shared)
Local Number Portability and Thousands-Block)
Number Pooling Costs)
_____)

RM-11299

REPLY COMMENTS OF T-MOBILE USA, INC.

T-Mobile USA, Inc. ("T-Mobile") hereby replies to the comments submitted regarding the Petition for Rulemaking ("Petition") filed by BellSouth Corporation ("BellSouth") on November 3, 2005. The comments demonstrate that the Federal Communications Commission ("FCC" or "Commission") should deny BellSouth's Petition and retain the current methodology for distributing among service providers the shared costs of local number portability ("LNP") and thousands-block number pooling ("pooling").¹

As an initial matter, several parties correctly noted that BellSouth's Petition is based upon the erroneous view that BellSouth, like the other ILECs, is "absorbing costs for which it receives no benefit," and that this view of "benefits" is fundamentally inconsistent with the entire

¹ See, e.g., COMPTel Comments (opposing BellSouth Petition); Comments of the Connecticut Department of Public Utility Control ("CTDPUC Comments") (same); Cox Comments (same); Integra Comments (same); T-Mobile Comments (same); Time Warner Opposition (same); Comments of XO and Xspedius (same).

regulatory framework the Commission has created for LNP and pooling.² The comments of parties who support BellSouth's position similarly are based on BellSouth's view of "benefits"³ that are fundamentally flawed for the same reasons T-Mobile and others explained in their comments.

The Connecticut Department of Public Utility Control ("CTDPUC") and several parties agree with T-Mobile that BellSouth's Petition merely repeats arguments that the Commission fully considered and rejected when it adopted a revenue-based methodology, and that nothing relevant has changed since that time.⁴ For example, as many parties noted, competition has not matured to the point where the Commission's initial logic is no longer applicable, despite BellSouth's claims to the contrary.⁵ Moreover, as T-Mobile explained in its initial comments,

² See, e.g., COMPTTEL Comments at 3; Cox Comments at 4; and Time Warner Opposition at 2.

³ See, e.g., AT&T Comments at 4 (arguing that it is not competitively neutral for ILECs to pay greater percentages of shared costs when they generate fewer billable transactions); NTCA Comments at 2 (claiming that "[n]otwithstanding the increase in porting and pooling activities, rural ILECs are less likely than the competitors to be in the position to take advantage of the services."); Qwest Comments at 3 (complaining that Qwest is paying an undue percentage of costs because its percentage of total transactions has decreased); USTA Comments at 2 (alleging that ILECs should not have to pay increased shared costs because they generated fewer billable transactions); Verizon Comments at 4 (complaining that "any logical connection between a provider's use of, or benefit from, the database and its portion of the shared costs has disappeared")

⁴ See, e.g., CTDPUC Comments at 2 ("[T]he CTDPUC does not believe that conditions have sufficiently changed warranting a change in the manner in which these costs are currently recovered. Accordingly, the CTDPUC recommends that the BellSouth Petition be denied.").

⁵ See, e.g., Integra Comments at 3 (noting that nothing has changed since 1998 when the Commission recognized that incumbents have a large embedded customer base from which other carriers would solicit and win customers and that CLECs would therefore generate more billable transactions); CTDPUC Comments at 3 (concurring that the competitive landscape has changed since passage of the Telecom Act, noting however that it is concerned the current level of competition may not be as robust as BellSouth suggests); Cox Comments at 5 (stating that local markets are far from competitive at

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that relative market share, rather than time in the market, is the determinative factor with respect to the discriminatory obstacles that a usage-based mechanism would create, and the ILECs continue to have overwhelming market share.⁶ As Time Warner accurately observed, although the gradual increase in competitor market share is promising, the 18.5% market share that competitors have captured represents thousands of carriers nationwide, while the remaining 81.5% accounts for the stronghold held by the few incumbents, which highlights the enormous disparity in market share between the ILEC and the competitors each ILEC faces.⁷ Repeated claims that the market has matured cannot change the fact that neither BellSouth nor any of its supporters have identified a single reason why the Commission's original conclusions are no longer true.

Similarly, USTA's support for BellSouth's argument that the passage of time has undermined the Commission's original justification for adopting a revenue based system provides nothing to remedy the flaws in BellSouth's reasoning. For example, USTA, like BellSouth, argues that the Commission rejected a usage-based mechanism in part due to concern about carrier unwillingness to download broadcast messages because of charges they will incur, but that, since downloads of broadcast messages do not constitute billable transactions, the

present, including those in which CLECs have begun to offer alternatives to the landline services of incumbents); and Time Warner Opposition at 5 (noting that incumbents continue to control a vast majority of customers with 90% of switched access lines); *see also* COMPTTEL Opposition at 4 (noting that BellSouth's 40% ownership interest in the nation's largest wireless carrier certainly causes BellSouth's end-user customer base to far exceed its 20% share of the region's shared costs).

⁶ *See, e.g.*, T-Mobile Comments at 4 (explaining that carriers with a much smaller market share are likely to port far more numbers in than they port out, while the ILECs are likely to port far more numbers out than they port in).

⁷ *See* Time Warner Opposition at 5 (noting that incumbents continue to control the vast majority of customers – approximately 90% of switched access lines).

Commission's concern no longer reflects reality.⁸ However, T-Mobile agrees with Time Warner that the Commission's concern was not limited solely to downloads.⁹ Rather, the Commission found that usage-sensitive recovery mechanisms are contrary to the public interest because they create disincentives for carriers to engage in activities that serve the public interest – including uploads that continue to be billable transactions – and unfairly penalize those who engage in such activities on a more frequent basis.¹⁰

In the end, none of the parties who support the BellSouth Petition provided any explanation, let alone record evidence, that could overcome the fatal deficiencies in the BellSouth Petition.¹¹ Put simply, none of the relevant facts have changed, and a usage-based distribution mechanism would continue to disadvantage all carriers with less market share than the ILECs, including new entrants, and discourage carriers from engaging in activities that serve the public interest by, among other things, ensuring accuracy of the NPAC.¹² As such, the public interest is best served by retaining the current revenue-based recovery mechanism.

⁸ USTA Comments at 4.

⁹ Time Warner Opposition at 6.

¹⁰ *See, e.g.*, T-Mobile Comments at 8-9.

¹¹ *See, e.g.*, AT&T Comments at 3-4 (arguing that CLECs are no longer in their infancy and that the marketplace is characterized by competition from wireless and IP-based services); NTCA Comments at 2 (claiming that competitors are now well-established in the telecommunications marketplace); Qwest Comments at 1 (claiming that the current distribution methodology was crafted years ago in a different numbering and competitive landscape); USTA Comments at 4 (arguing that the reasons the Commission chose the revenue-based allocation mechanism are no longer applicable, and that CLECs, as full-fledged competitors, do not require the Commission's protection to establish market share); Verizon at 2 (claiming that CLECs are no longer fledgling companies entering a new industry, but rather well-established participants in a vigorously competitive market).

¹² *See, e.g.*, CTDPU Comments at 3 (stating that a change in the cost allocation mechanism as suggested by BellSouth could result in the erection of barriers to entry to new service providers thus slowing the adoption and deployment of new technologies);

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To the extent that the Commission deems it necessary to improve the efficiency with which carriers use the database after improving the intermodal portability process, the agency could initiate a rulemaking proceeding to reexamine the classification of each type of billable transaction as a shared cost or a direct carrier cost. As T-Mobile explained in its initial comments,¹³ some carriers use the database in a manner that arguably is more of a direct cost than a shared cost, such as using the database to make changes in their networks (*e.g.*, switch replacement – using porting to move NXX codes from an old switch to a new switch – or load balancing – using porting to move NXX codes from one switch to another in order to balance out the load so that calls are not blocked). To the extent that the a particular use of the database more closely resembles a direct carrier cost rather than a shared cost, and thus that there is no reason why that particular usage does not benefit the industry as a whole by facilitating competition or ensuring accuracy of the database, the Commission could consider requiring carriers to pay for those specific costs on a usage basis. Specifically, targeted usage charges could avoid the types of harms that would result from BellSouth's proposal. Before the Commission undertakes such a comprehensive reexamination of individual transactions, however, T-Mobile respectfully submits that the Commission should first implement the improvements to the intermodal porting process that T-Mobile has recommended and determine whether further increases in efficiency are warranted. In any event, BellSouth's Petition should be denied.

Cox Comments at 5-6 (noting BellSouth's estimates that the current number of VoIP customers may grow significantly by 2009 and stating that this projection falls far short of proving a present need to abandon the current revenue-based methodology).

¹³ See T-Mobile Comments at 16-19.

CONCLUSION

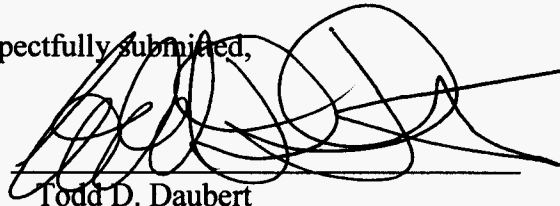
For the reasons described above, T-Mobile respectfully requests that the Commission dismiss BellSouth's Petition and maintain the current revenue-based mechanism for determining carrier contribution to the shared costs of LNP and pooling. Rather than abandoning the current recovery mechanism, the Commission should improve the efficiency in which the NPAC is used by improving intermodal portability.

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